

031  
No. 2822

---

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

JOHN H. MARTIN, as Trustee in Bankruptcy of  
the IMPERIAL COPPER COMPANY, a  
Corporation, Bankrupt,

Appellant,

vs.

THE DEVELOPMENT COMPANY OF AMER-  
ICA, a Corporation,

Appellee.

---

Transcript of Record.

---

Upon Appeal from the United States District Court for the District  
of Arizona.

---

F. D. Monckton,  
Clerk

JUL 10 1916

Filed



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

JOHN H. MARTIN, as Trustee in Bankruptcy of  
the IMPERIAL COPPER COMPANY, a  
Corporation, Bankrupt,

Appellant,

vs.

THE DEVELOPMENT COMPANY OF AMER-  
ICA, a Corporation,

Appellee.

---

Transcript of Record.

---

Upon Appeal from the United States District Court for the District  
of Arizona.

---



# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Assignment of Errors.....	43
Attorneys of Record, Names and Addresses of..	1
Certificate of Clerk United States District Court to Transcript of Record.....	46
Complaint .....	1
Judgment.....	38
Minute Order Made on June 14, 1916.....	41
Motion to Dismiss Complaint and Answer.....	22
Names and Addresses of Attorneys of Record...	1
Order Allowing Appeal, etc. ....	42
Petition for Appeal.....	40
Plaintiff's Assignment of Errors.....	43
Praecipe for Transcript of Record.....	45



**Names and Addresses of Attorneys of Record.**

FRANCIS M. HARTMAN, EDWIN F. JONES,  
Tucson, Arizona,

Counsel for Appellant.

SELIM M. FRANKLIN, Tucson, Arizona,  
ELLINWOOD & ROSS, Bisbee, Arizona,  
Counsel for Appellee. [1\*]

---

*In the United States District Court for the District  
of Arizona.*

IN EQUITY—E-27 (TUCSON).

JOHN H. MARTIN, Trustee in Bankruptcy of the  
IMPERIAL COPPER COMPANY, a Corpo-  
ration,

Plaintiff,

vs.

THE DEVELOPMENT COMPANY OF AMER-  
ICA, a Corporation,

Defendant.

**Complaint.**

To the Honorable Judge of the District Court of the  
United States for the District of Arizona:

John H. Martin, Trustee in Bankruptcy of the  
Imperial Copper Company, a corporation, bankrupt,  
a citizen of the State of Arizona, and a resident of  
Pima County in said State, brings this his Bill  
against The Development Company of America, a  
corporation, organized, created by and existing  
under and by virtue of the laws of the State of Dela-

---

\*Page-number appearing at foot of page of original certified Record.



ware, and owning property, conducting and transacting business and having an agent within the State of Arizona.

And for this cause of action plaintiff states:

I.

That plaintiff is now and has been since on or about July 2, 1914, the duly elected, qualified and acting Trustee in Bankruptcy of the Imperial Copper Company, a corporation, bankrupt, and is a citizen of the State of Arizona, and a resident of Pima County, in said State; and that the defendant, The Development Company of America, during all the times mentioned herein, was and is a corporation organized, created by and existing under and by virtue of the laws of the State of Delaware, and owning property, conducting and transacting business and having an agent within the State of Arizona.

II.

That this suit is between citizens of different States, and is a matter or proceeding in bankruptcy. That the amount in [2] controversy herein exceeds the sum of Three Thousand Dollars (\$3,000.00), exclusive of interest and costs.

III.

That the defendant, during all the times mentioned herein, was and is now engaged in the business of purchasing, developing and operating mining and smelting properties, and the building and operating of railroads in the State of Arizona.

IV.

That the said defendant, heretofore, in the year 1903, acquired, owned and held a certain contract



for the purchase of certain mining properties situate at Silver Bell, Pima County, Arizona, and being those certain mining properties hereinafter more particularly described, for the price and sum of Five Hundred and Fifteen Thousand Dollars (\$515,000.00), and that thereafter on or about May 11, 1903, defendant created and caused the said Imperial Copper Company, a corporation, to be organized under the laws of Arizona, for the purpose of consummating, carrying out and carrying into effect, the said contract of purchase, for the use and benefit of defendant, and for the purpose of purchasing, developing and operating said mining properties, for the use and benefit of defendant, and in the furtherance of the said business of the said defendant, and for the purpose of carrying on and conducting the business of the said defendant, for its use and benefit, in which it was so engaged as aforesaid. [3]

V.

That all of the incorporators, directors and officers of the said Copper Company were at all times employees of the said Development Company.

That the said Development Company, at all the times herein mentioned, and up until on or about March 31, 1915, owned and controlled practically all of the shares of the capital stock of the said Copper Company; and from the date of the organization of the said Copper Company and up until some time in 1911, when the said Copper Company was adjudicated a bankrupt, as hereinafter set forth, elected all of the directors, officers and managers of the said Copper Company, from its own employees, directors

and officers; and controlled, directed, handled and transacted all the business of the said Copper Company, as a department or bureau of the business of the said Development Company; and collected, received, handled and used all of the moneys and proceeds derived from the operation of the said mining properties, and all the profits thereof, and appropriated the same to its own use, in its business of purchasing, developing and operating mining and smelting properties as aforesaid.

#### VI.

That the said Development Company caused the title to the said mining properties so situate at Silver Bell, Pima County, Arizona, to be taken in the name of the said Copper Company, and caused the said mining properties to be developed and operated in the name of the said Copper Company, and for the use and benefit of the said Development Company; and that the title to the said properties was so taken in the name of the said Copper Company and the said properties so operated in the name of the said Copper Company, as a convenience to the said Development Company, and to facilitate the said business of the said Development Company of purchasing, developing and operating mining and smelting properties. [4]

#### VII.

That F. M. Murphy, a resident of the County of Yavapai, State of Arizona, is now, and during all the times mentioned herein was, the President and chief officer of the said Development Company, and is now, and has been since November 9, 1909, the President

and chief officer of the said Copper Company.

That the Board of Directors of the said Copper Company was composed of seven persons, to wit: F. M. Murphy, E. B. Gage, H. M. Robinson, Selwyn Eddy, V. L. Mason, W. F. Staunton and A. N. Gage; and that the said F. M. Murphy, E. B. Gage, H. M. Robinson, Selwyn Eddy and V. L. Mason, were, at the same time, directors in the said Development Company.

That the Executive Committees of the said Development Company and the said Copper Company were composed of practically the same individuals, in this, to wit, that the Executive Committee of the said Development Company was composed of F. M. Murphy, E. B. Gage, H. M. Robinson, V. L. Mason and B. P. Cheyney; and that the Executive Committee of the said Copper Company was composed of F. M. Murphy, E. B. Gage, H. M. Robinson, V. L. Mason and W. F. Staunton.

#### VIII.

That the said Development Company so created the said Copper Company and used the same as an auxiliary, subsidiary, branch, agent and instrumentality, in conducting and carrying on its said business of purchasing, developing and operating mining and smelting properties.

#### IX.

That the said Development Company in 1903, caused the said Copper Company to execute a first mortgage or deed of trust upon all of said mining properties to secure a bond issue in the sum of Two Million Dollars (\$2,000,000), for the use and benefit



of the said Development Company, and that all of said bonds were issued and delivered to the said Development Company, and that the said Development Company used all of said bonds and the [5] proceeds of the sale thereof in its business of purchasing, developing and operating mining and smelting properties: and that the said Development Company also used all the capital stock of the said Copper Company, of the par value of Five Million Dollars (\$5,000,000), and the proceeds of the sale thereof, in its said business of purchasing, developing and operating mining and smelting properties in Arizona.

### X.

That the said Development Company, in furtherance of its said business of purchasing, developing and operating mining and smelting properties, in Arizona, and especially those certain mining and smelting properties situated in Pima and Pinal Counties, Arizona, hereinafter referred to, and for the purpose of carrying on and engaging in its said business in Arizona, also, some time in 1903 and 1904, created two certain other dummy corporations under the laws of Arizona, to wit, the Arizona Southern Railroad Company and the Southern Arizona Smelting Company, and elected all the directors, officers and managers of said dummy corporations, and at all times controlled and managed the affairs and business of both of such dummy corporations, as bureaus or departments of its said business; and caused all the shares of the capital stock of said two corporations to be issued to and to be held in the

name of the said Copper Company; and thereafter, in 1904, the said Development Company caused all the shares of the capital stock of the said Railroad Company and of the said Smelting Company to become subject to the lien of the said mortgage or deed of trust, as additional collateral security for the said issue of bonds in the sum of Two Million Dollars, so theretofore issued and delivered to the said Development Company. [6]

XI.

That the mining properties so purchased, developed and operated by the said Development Company, through the said Imperial Copper Company, the said Arizona Southern Railroad Company and the said Southern Arizona Southern Smelting Company, and so covered by the said mortgage or deed of trust, are situate in the Silver Bell Mining District, Pima County, Arizona, and in Pinal County, Arizona, and are more particularly described as follows, to wit:

United States Patented Mines:		Patent Recorded in Recorder's Office Pima County, in Records Deeds of Real Estate:	
Mammoth Copper	Book 24	Deeds Mines	page 236
Imperial	24		215
Prospector	24		231
Southern Beauty	24		215
Comet	24		215
Herbert	24		223
Page	24		215
Kankee	24		229
Confidence	24		226

United States Patented Mines:	Patent Recorded in Recorder's Office Pima County, in Records Deeds of Real Estate:	
Bell and Pope	24	233
Alliance, Northern & Enterprise	24	220
Union	24	215
Murray & Mollie (excepting certain por- tions of said Mollie & Murray)	26	251
Emerald	24	553
Hamilton	24	533
Florence	24	527
Black Daisy	24	533
Apache, Papago, Omaha, Baltimore, Swansea, and Detroit	24	262
Sampson	24	337
Hilda	26	259
Black Eagle	25	721
John F.	25	721
Leslie (Excepting certain por- tion of said Leslie)	24	426
Maggie	24	527
Spike	24	527
Billy	25	721
Frank B.	26	259
Wedge	25	721
Strip	25	721
Fraction	24	310
Wedge	24	310



# The Development Company of America. 9

United States Patented Mines:	Patent Recorded in Recorder's Office Pima County, in Records Deeds of Real Estate:	
Percy	24	424
Midget	24	474
Mountain View	24	267
Protection, Chance, Long-		
shot and Remnant	25	484
Peerless	25	509
[7]		

## United States Patented Mines, Continued:

Prince of Wales	Book 25	page 504
(excepting portion of same)		
Red Ridge	25	729

## Location Notices Recorded in Recorder's Office, Pima County, Arizona, in Rec- ords of Mines:

Unpatented Lode Mining Claims:		
Olympia	Book GG	page 682
Queen	HH	225
Accident	GG	53
Anita	GG	335
Millionaire	GG	582
Trudie	GG	681
El Paso	GG	583
Pima	OO	448
Giant	II	755
Bonzana	OO	438
Blue Hill	OO	439
Campo	OO	439
Caliche	OO	440
Cholla	OO	442
Palo Verde	OO	443
Sahura	OO	444
Sure Thing	OO	445

Unpatented Lode Mining Claims:		Location Notices Recorded in Recorder's Office, Pima County, Arizona, in Rec- ords of Mines:
Tuna	OO	446
West End	OO	447
Taft	OO	449
North Slope	OO	450
Wye	OO	493
Copperosity	LL	555
Sentipede, No. 2	MM	251
Oversight	NN	513
Andesite	NN	395
Aplite	NN	396
Dlabase	NN	397
Diorite	NN	398
Granite	NN	399
Monzonite	NN	401
Dacite	NN	402
Phonolite	NN	402
Syenite	NN	403
Trachyte	NN	403
Porphyry	NN	405
Basalt	NN	406
Pegmatite	NN	407
Rhyolite	NN	408

Also the buildings, plan, fixtures, machinery and appliances situate upon or annexed or appurtenant to the above-described property, and used in connection therewith.

Also those certain pieces and parcels of real estate situate in Pima County, Arizona, in Township Eleven South, Range Eleven East, namely: Lots One (1), Two (2), Three (3) and Four (4) of Sec-

tion Six (6); the North Half ( $1\frac{1}{2}$ ) of the Northeast Quarter; and the Southeast Quarter of the Northeast Quarter of Section Seven (7); the Northwest Quarter, and the North Half of the Southwest Quarter, and the Northwest Quarter of the Southeast Quarter of Section Eight (8), containing approximately 642 acres. [8]

Also the following described lots, pieces or parcels of real estate situate in the County of Pinal, Arizona, to wit:

The North half ( $1\frac{1}{2}$ ); the North half ( $1\frac{1}{2}$ ) of the Southwest quarter and the Southeast quarter of Section Eight (8); the West half ( $1\frac{1}{2}$ ) of the Southwest quarter of Section ten (10); all of Section Nine (9) and about Twenty (20) acres out of the Southwest quarter of Section Four (4) in Township Ten (10) South, Range ten (10) East, G. & S. R. B. & M., subject to a certain right of way.

That the shares of stock hereinbefore referred to as having been made subject to the lien of said mortgage by the said Development Company, are described as follows, to wit:

Eight Thousand (8,000) shares of the capital stock of the Arizona Southern Railroad Company, an Arizona corporation; and Nine Thousand (9,000) shares of the capital stock of the Southern Arizona Smelting Company, an Arizona corporation.

## XII.

Plaintiff is informed and believes, and upon such information and belief alleges, that on July 3, 1911, the said Development Company being then and there the owner and holder of and controlling a majority

of said bonds and the said shares of stock of the said Copper Company, caused a suit to be instituted in the then District Court of the First Judicial District of the Territory of Arizona, in and for Pima County, to foreclose said mortgage or deed of trust on all of said mining properties, and on said shares of stock of said Railroad Company and said Smelting Company, and thereafter on December 28, 1914, obtained a decree of foreclosure of said mortgage or deed of trust, by the Superior Court of the State of Arizona, in and for the County of Pima, the successor of said last above-named court, and an order of sale of all of said mining properties, and of said shares of stock; and thereafter on March 31, 1915, the said Development Company caused all of said mining properties and said shares of stock to be sold under such foreclosure, and caused the said mining properties to be bid in at such sale, in the name of Leo Goldschmidt of Tucson, Pima County, Arizona, at the price of [9] Ninety Thousand Dollars (\$90,000) and the said shares of stock of the said Railroad Company and said Smelting Company at the price of Twelve Thousand Dollars (\$12,000), for the use and benefit of the said Development Company, or for the use and benefit of the said F. M. Murphy, the President and chief officer of the said Development Company, and as representing the stockholders and bondholders of the said Development Company; and that the said Development Company and the said Murphy, as the real parties in interest in said purchase at such foreclosure sale, are now negotiating for the sale of all of said mining properties



and said shares of stock of said Railroad Company and said Smelting Company, and have made and entered into some character of agreement with the American Smelting & Refining Company, a corporation organized under the laws of New Jersey, and transacting business in Pima County, Arizona, for the sale to the said American Smelting & Refining Company, of all of said mining properties and said shares of stock, and that the said Smelting & Refining Company is now in possession of said mining properties and working upon the same.

XIII.

That on July 5, 1911, a petition in bankruptcy was filed against the said Copper Company, in the then District Court of the First Judicial District of the Territory of Arizona, by certain creditors, and thereafter on July 25, 1911, said Copper Company was duly adjudged bankrupt; and that thereafter and prior to the first meeting of the creditors on August 12, 1911, the following claims were filed in said bankruptcy proceeding:

Haas, Baruch & Co., for merchandise.....	\$9,478.39
Pacific Hardware & Steel Co.   “       .....	1,053.38
Bishop & Co.,                               “       .....	573.68
J. F. Lucy & Co.,                           “       .....	280.99
Levi Strauss & Co.,                       “       .....	482.46
A. Schilling & Co.,                       “       .....	1,103.68
Associated Oil Co.,                        “       .....	3,280.74
Lamar Milling Co.,                        “       .....	901.80

[10]

Dupont Powder Co.,                       “       .....	15,109.41
Pabst Brewing Co.,                        “       .....	1,878.75

San Pedro Lumber Co.,	“	.....	3,638.80
El Paso Foundry & Machine Co., merchan-			
dise .....			552.55
Home Pattern Co., merchandise.....			70.15
Brownstein, Lewis & Co., “	.....		984.81
Wheeler & Motter Mercantile Co., merchan-			
dise .....			2,924.48
			<hr/>
			\$42,296.07

That the following claims so filed were controlled by the said Development Company, and by the said F. M. Murphy, as the President and Chief Officer of said Development Company:

Southern Arizona B. & T. Co.....	\$ 5,000.00
Sullivan Machinery Co.....	878.16
Elfred J. Peters & Co.....	590.46
Ben Goodrich .....	600.00
Star Drilling Machine Co.....	987.70
Meade Goodloe .....	523.72
E. K. Wood Lumber Co.....	7,457.84
Standard Oil Co.....	4,347.90
Houch & Deiter.....	1,137.33
Cons. Lumber Co.....	14,714.28
Pacific Lumber Co.....	14,499.53
Cons. National Bank.....	10,000.00
W. K. Flora.....	240.35
Marshall Field & Co.....	1,837.61
	<hr/>
	\$105,110.95

Development Company of America.....	\$ 39,423.02
-------------------------------------	--------------

(Which said claim as appears from the proof of debt so filed by the Development



Co., is on a note dated May 1, 1911, payable on demand, to the Development Co., executed by the Copper Company, for \$25,000.00, and for balance on open account of dealings between said bankrupt and said creditor and on account of arrears OF INTEREST ACCRUING UPON BONDS of said bankrupt held and owned by said Development Company.)

Empire Trust Company of New York. . . . \$238,000.00

(Which said claim, as appears from the proof of debt so filed by said Empire Trust Company, is founded upon eight promissory notes executed by the Copper Company payable to the Development Company, two of which said notes for \$50,000.00 each were executed by the said F. M. Murphy as President of the Copper Company, and at the same time President of the said Development Company.) [11]

National Park Bank of New York. . . . . \$161,704.15

(Which said claim, as appears from the proof of debt so filed by said National Park Bank, to be founded upon five promissory notes executed by the Copper Company, payable to the Development Company.)

Thomas W. Joyce, of New York. . . . . \$725,966.43

(Which said claim, as appears from the proof of debt so filed by the said Joyce, is founded upon fifteen promissory notes, fourteen for \$50,000.00 each and one for

\$25,000.00, all dated April 1, 1910, executed by the Copper Company, payable on demand to the said Development Company.)

Philbin, Beekman, Menken & Griscom...\$10,661.67

(Which said claim, as appears from the proof of debt thereof so filed, is founded upon a promissory note dated June 16, 1910, executed by the Imperial Copper Company, by F. M. MURPHY, President, who was at the same time President of the said Development Company, payable on demand to the said Development Company of America.)

El Tiro Copper Company (not yet allowed) .....	\$ 3,196.99
Arizona Southern R. R. Co. (not yet allowed) .....	\$14,440.14

---

Total of claims filed.....\$1,298,323.35

That all of the above-mentioned claims have been allowed by the Referee in Bankruptcy of said proceeding, excepting the claims of El Tiro Copper Company and the Arizona Southern R. R. Co., making a total of claims allowed in said bankruptcy proceeding, of the sum of.....\$1,280,686.22

#### XIV.

That at the first meeting of the creditors in said bankruptcy proceedings on or about August 12, 1911,

M. P. Freeman was elected Trustee, and acted as such until on or about July 2, 1914, at which time he resigned and plaintiff was duly elected and qualified as such Trustee.

XV.

Plaintiff is informed and believes, and upon such information and belief alleges, that there was some character of [12] agreement between the said Development Company and the said Murphy, as the President and chief officer thereof, and the creditors of said estate, that said bankruptcy proceedings should lie dormant, and that the said Development Company and the said Murphy should be allowed time within which to re-finance and rehabilitate said mining properties to enable the said Development Company and the said Murphy to raise sufficient funds with which to liquidate and pay off and discharge said debts; and that in pursuance of said agreement, and relying upon the representations and promises so made by the said Development Company and the said Murphy, the said creditors did allow said bankruptcy proceedings to lie dormant, up until some time in 1914, and until the election and qualification of plaintiff herein as such Trustee; and "that any seeming delay in the institution of this action was caused by the said Development Company and the said Murphy themselves; and plaintiff further alleges that he is informed and believes and upon such information and belief alleges, that the said Development Company and the said Murphy controlled the said bankruptcy proceedings during all of said time and up until plaintiff herein



was elected and qualified as such trustee.

#### XVI.

That the action of the said Development Company in causing all the said mining properties and the said shares of stock in the said Railroad Company and said Smelting Company to be so sold under said foreclosure proceeding, resulted in stripping the said Copper Company of practically all of its assets, with the exception of some personal property situated at said mines, which said personal property plaintiff as such Trustee caused to be advertised for sale at public auction, after due and legal notice, and that the only bid received therefor was a bid in the sum of Five Hundred Dollars (\$500.00) made by Geo. W. Dietz of [13] Tucson, Pima County, Arizona, and he has not been able to obtain any other bid for said personal property, at private sale, than the sum of Fourteen Hundred Dollars (\$1400.00).

#### XVII.

That there has not been sufficient moneys or property come into the hands of plaintiff, as such trustee of said estate, with which to pay any dividends upon the claims so filed and allowed by the Referee in Bankruptcy in said proceeding, as herein before set forth.

#### XVIII.

That by reason of the matters and things herein set forth, plaintiff is advised and informed, and therefore alleges, that the said Development Company of America, the defendant herein, became and is liable for all of the debts of the said Copper Com-

pany, and as filed and allowed in said bankruptcy proceedings, amounting to the sum of One Million Two Hundred and Eighty Thousand Six Hundred and Eighty-six and 22/100 Dollars (\$1,280,686.22), with interest thereon at the rate of six per cent per annum from the date of said allowance; and that all of the said mining properties and the said shares of stock of the said Railroad Company and of said Smelting Company, so purchased at such foreclosure sale by the said Development Company of America, or for its use and benefit, are liable for all of said debts.

Wherefore plaintiff prays:

1. That plaintiff have and recover judgment against the defendant, the said Development Company of America, for the said sum of One Million Two Hundred and Eighty Thousand Six Hundred and Eighty-Six and 22/100 Dollars (\$1,280,686.22), the amount of the debts so filed and allowed in said bankruptcy proceedings, with interest at the rate of six per cent per annum from the date of such allowance. [14]

2. That plaintiff have Judgment decreeing that all of the said mining properties and the said shares of stock of said Railroad Company and said Smelting Company are liable for the claims of the creditors of said Copper Company, as filed and allowed in said bankruptcy proceeding.

3. That the claims of the said creditors of the said Copper Company be decreed and declared to be liens upon all the right, title or interest in and to said properties acquired by the said Development

Company under and by virtue of said foreclosure proceeding.

4. That all of the said mining properties and the said shares of stock be decreed to be a part of the assets of the said Imperial Copper Company, bankrupt; that the jurisdiction of plaintiff as Trustee of said Imperial Copper Company, bankrupt; be extended to the same and that the said properties be administered upon by plaintiff as such Trustee.

5. And for alternative relief; that the defendant, the said Development Company of America be required and ordered to pay over to plaintiff all sums of money derived or to be derived by it from any sale or sales of any of said properties, to the extent of the said indebtedness and claims so filed and allowed against the said Copper Company, bankrupt.

6. And for any other, further, special or general relief in the premises as to the Court may seem meet and proper, and for costs.

Answer under oath waived.

FRANCIS M. HARTMAN,  
EDWIN F. JONES,

Attorneys for Plaintiff.

[15]

State of Arizona,  
County of Pima,—ss.

Personally appeared before the undersigned authority, John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a corporation, bankrupt, the plaintiff in the above-entitled action, who being duly sworn as to the truth of the allegations made in the above bill, says that he has read the



foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes them to be true.

JOHN H. MARTIN.

Subscribed and sworn to before me this 23d day of August, A. D. 1915.

My com. Ex. July 29, 1916.

[Seal]

TOM K. RICHEY,

Notary Public, Pima County, Arizona.

(20 cents in revenue stamps.)

[Endorsements]: E-27—Tucson. In the United States District Court for the District of Arizona. John H. Martin, Trustee of the Imperial Copper Company, a Corporation, Bankrupt, Plaintiff, vs. The Development Company of America, a Corporation, Defendant. In Equity. Plaintiff's Bill of Complaint. Filed Aug. 23, A. D. 1915, at 11:30 A. M. George W. Lewis, Clerk. By Geo. C. Pollock, Deputy Clerk. Francis M. Hartman, Attorney at Law, Tucson, Arizona. [16]

*In the United States District Court, for the District  
of Arizona.*

IN EQUITY—E-27. (TUCSON.)

JOHN H. MARTIN, Trustee of the IMPERIAL  
COPPER COMPANY, A Corporation, Bank-  
rupt,

Plaintiff,

vs.

THE DEVELOPMENT COMPANY OF AMER-  
ICA, a Corporation,

Defendant.

**Motion to Dismiss Complaint and Answer.**

**MOTION TO DISMISS FOR WANT OF JURIS-  
DICTION.**

Now comes the Development Company of America, the defendant in the above-entitled action, and answering plaintiff's complaint alleges, as a separate defense, that at the commencement of this action this defendant was not, and is not, an inhabitant of nor residing in the District of Arizona, where this suit is brought, but that at the commencement of this action, and now, this defendant was and now is an inhabitant of and residing in the State of Delaware; that at the time of the commencement of this action this defendant was not, and has not since been, and is not now, engaged in the transaction of business within the State of Arizona; and therefore that this action is not properly within the jurisdic-

tion of this court, and defendant moves that the same be dismissed. [17]

MOTION TO DISMISS FOR WANT OF INSUFFICIENCY OF FACT TO CONSTITUTE A VALID CAUSE OF ACTION IN EQUITY.

And said defendant, without waiving its foregoing motion to dismiss for want of jurisdiction, but if the same be overruled, further answering the said bill of complaint, alleges, that the said bill of complaint upon its face discloses an insufficiency of fact to constitute a valid cause of action in equity; and that the plaintiff has not alleged in the said bill of complaint facts sufficient to constitute any valid cause of action in equity, in law or otherwise against this defendant, or any cause of action whatsoever.

Wherefore, defendant prays that said bill of complaint be dismissed.

PLEA IN BAR.

And said defendant, without waiving its said foregoing motion to dismiss for want of jurisdiction, but if the same be overruled, then further answering the bill of complaint, alleges, that plaintiff is barred and estopped to litigate the matters and things set forth in the said bill of complaint, by reason and by virtue of a certain judgment heretofore rendered and entered by the Superior Court of the State of Arizona, in and for the County of Pima, in which suit the said plaintiff was a party, and in this behalf, this defendant further avers:

1. That heretofore on or about the 3d day of



July, 1911, a certain action was instituted in the District Court of the First Judicial District of the Territory of Arizona, in and for the County of Pima, being the predecessor of said Superior Court of the State of Arizona, in and for the County of Pima, wherein Bankers Trust Company, a corporation, was [18] plaintiff, and the Imperial Copper Company, a corporation mentioned in the complaint herein, was defendant; that said action was brought for the purpose of foreclosing that certain mortgage or deed of trust mentioned in paragraph 9 of said complaint, to recover the principal and unpaid interest upon \$2,000,000 of bonds of said Imperial Copper Company mentioned in said paragraph 9, to have the same declared a first lien upon the mining property, real estate and the shares of the capital stock of Arizona Southern Railroad Company and Southern Arizona Smelting Company, mentioned in plaintiff's bill of complaint herein.

That at the time of the filing of said complaint for foreclosure of said mortgage or deed of trust aforesaid, no bankruptcy proceedings had been instituted against the said Imperial Copper Company; but that within a few days after the commencement of such suit the bankruptcy proceedings mentioned in plaintiff's bill of complaint were instituted; that at the time when said foreclosure suit was instituted, and before the institution of said bankruptcy proceedings against the Imperial Copper Company, said District Court of the Territory of Arizona in which said foreclosure suit was pending, by its order appointed Merrill P. Freeman, as

its Receiver in said action, who thereupon qualified as such Receiver, and prior to the institution of said bankruptcy proceedings took actual charge and custody of all of the mines, mining property, real estate and shares of stock above mentioned, and ever since has had and still continues to have charge, custody and possession of all of said mines, mining property and real estate, aforesaid.

2. That on or about July 9, 1914, pursuant to proper proceedings in that behalf, plaintiff herein, John H. Martin, as Trustee in Bankruptcy of Imperial Copper Company, a corporation, [19] bankrupt, intervened and became a party defendant in this foreclosure suit aforesaid, and filed his answer therein, wherein, amongst other things, he did pray the said Court to decree that the said bonds and mortgage or trust deed aforesaid be decreed to be of no force and effect whatsoever as against him, plaintiff herein, as Trustee in Bankruptcy as aforesaid, or as against the creditors of the said Imperial Copper Company, Bankrupt, and did also pray for all other special or general relief as might be proper in the premises, and did further pray that the said foreclosure suit, in so far as it related to the shares of stock of the said Southern Arizona Smelting Company, and the said shares of stock of the said Arizona Southern Railroad Company, be dismissed and abated. That in and by said answer, plaintiff herein, as such intervenor, set forth and alleged substantially the same matters as are set forth and alleged in the bill of complaint herein, touching said mortgage or deed of trust and

said bonds and the rights of the Imperial Copper Company and of the plaintiff, as Trustee in Bankruptcy of the Imperial Copper Company, as against the holders of said bonds and said Bankers Trust Company, in or to said shares of stock and said mines, mining property and real estate described in the bill of complaint herein; that issues were duly joined in said action upon all of said matters; that thereafter due proceedings were had in said case, and that on the 28th day of December, 1914, the said Superior Court aforesaid, made, filed and rendered its findings of fact, conclusions of law, judgment and order of sale in said action, in favor of said Bankers Trust Company as plaintiff, and against said Imperial Copper Company and John H. Martin, as Trustee in Bankruptcy of said Imperial Copper Company as Intervenor; a true and correct copy of which findings of fact and conclusions of law is hereto [20] annexed, marked Exhibit "A," and a true and correct copy of which said judgment and order of sale is hereunto annexed, marked Exhibit "B," all of which are as fully made a part hereof as if set out at length at this point. That said findings of fact, conclusions of law, judgment and order of sale, at all times since have been and now are in full force and effect, and have not been in any respect vacated or modified or set aside.

3. That thereafter, pursuant to due and proper proceedings in that behalf, and in accordance with said judgment and order of sale, on the 31st day of March, 1915, Merrill P. Freeman, as Receiver and



Special Master of said Superior Court of the State of Arizona, in and for the County of Pima, did offer for sale at public vendue, and did sell all of the said mortgaged property aforesaid, being all of the mines, mining claims and real estate and all of the shares of stock of the said Arizona Southern Railroad Company and all of the shares of stock of the said Southern Arizona Smelting Company, which are mentioned and described in paragraph 9 of plaintiff's bill of complaint herein, as well as all other property that was covered or included by the said mortgage or trust deed, and the judgment and decree of said court aforesaid, as by the judgment and order of sale of the said Superior Court he was authorized and directed to do; that at said sale one Leo Goldschmidt became the purchaser of all of said property aforesaid, he being the highest and best bidder; that his bid was accepted by the said Receiver and Special Master, and all of said property was then and there struck off to him, the said real property, however, being sold subject to the right of redemption as provided for by the statutes of the State of Arizona. That the said Receiver and Special Master did, immediately after the said [21] sale, make and file with the said Superior Court his report of the said sale, and his prayer for confirmation of said sale; that his said application for confirmation of sale were set for hearing for the 17th day of April, 1915; that due notice of the said hearing was duly served upon the said John H. Martin, Trustee in Bankruptcy of the said Imperial Copper Company, Bankrupt, plaintiff herein; that on the

said 17th day of April, 1915, the said motion and application of said Receiver, for confirmation of said sale came up for hearing before the said Superior Court aforesaid, and the said John H. Martin, Trustee, as aforesaid, plaintiff herein, and his attorney of record were present in said court when said application was so heard; that the Superior Court did, on said day, make, render and enter its order confirming the said sale so made by said Receiver and Special Master, to said Leo Goldschmidt, the purchaser at said sale aforesaid, and did direct the said Receiver and Special Master to execute to the said Leo Goldschmidt a bill of sale, selling, assigning and transferring unto him all of the said shares of stock of the said Southern Arizona Smelting Company and Arizona Southern Railroad Company aforesaid, and directing him to deliver the certificates for all of said shares of stock of said companies to said Leo Goldschmidt, upon the said Leo Goldschmidt paying the purchase price bid by him therefor, and the said Court did further authorize and direct said Receiver and Special Master to execute and deliver to said Leo Goldschmidt a certificate of sale for all of said mines, mining claims and real property, so sold to him as aforesaid, upon his paying the said purchase price so bid by him aforesaid, therefor. That the said Leo Goldschmidt, long prior to the commencement of the present action, did make payment to said Receiver and Special Master of the said purchase price so bid by him for [22] all of said property aforesaid, and the said Receiver and Special Master did, a long time before the com-

mencement of the present action, execute and deliver to said Leo Goldschmidt a bill of sale or other written evidence of sale, transfer and assignment of all of said shares of stock aforesaid, and did deliver the said certificates for all of said shares of stock to said Leo Goldschmidt; and did also execute and deliver to said Leo Goldschmidt a certificate of sale for all of the mines, mining claims and real property so sold by him to said Goldschmidt, as aforesaid.

5. That by reason of the matters and things aforesaid, and of the said judgment and sale and confirmation of sale aforesaid, plaintiff herein, as Trustee of the Imperial Copper Company, a bankrupt, and the said Imperial Copper Company itself, are each forever barred and estopped from claiming any right, title or interest in and to any of the mines, mining claims or real property aforesaid, except the right which the said plaintiff as Trustee in Bankruptcy, aforesaid, has, or may have, to redeem said real property from said sale, under the right of redemption given under the statutes of Arizona.

And that, by reason of the said matters and things aforesaid, the plaintiff is barred and estopped from questioning or litigating in this Honorable Court, any of the said matters or things aforesaid, and particularly is barred and estopped from asserting or claiming any right, title, or interest in or to any of the said real estate aforesaid, except the right of redemption, and any right, title or interest of any kind or nature in or to the said shares of stock aforesaid, and that being so estopped and barred, his present action, wherein he seeks again to litigate all of the



matters and things so adjudicated against him by the said [23] Superior Court aforesaid, should be dismissed and judgment be rendered against him.

### ANSWER TO THE MERITS.

And this defendant, not waiving its said motion to dismiss for want of jurisdiction, but if the same be overruled, then further answering said bill of complaint does say:

1. Answering the allegation of paragraph 1 of the bill of complaint, this defendant denies that during all or any of the times mentioned in said bill of complaint, it owned property or conducted or transacted business within the State of Arizona.

2. Answering paragraph 2 of the bill of complaint, this defendant denies that this is a matter or proceeding in bankruptcy.

3. Answering paragraph 3 of the bill of complaint, defendant denies that during all the times mentioned therein, it was or now is engaged in the business of purchasing, developing or operating mines or smelting properties, or in the building or operating of railroads in the State of Arizona.

4. Answering paragraph 4 of said bill of complaint, this defendant denies that on or about May 11, 1903, it created, or caused to be created or organized, under the laws of Arizona, the Imperial Copper Company, for the purposes mentioned in said paragraph, or at all, or for the use and benefit of this defendant, or for any purpose whatsoever.

5. Answering paragraph 5 of said complaint, defendant denies that all of the incorporators, directors, or officers of said Copper Company were



at all times employees of said Development Company. Denies that at all the times mentioned in said complaint, or up until March 31, 1915, this defendant owned or controlled practically all of the shares of the capital [24] stock of said Copper Company, but alleges that it did at certain time own large number of shares of stock of the said Copper Company, and that it did vote said shares at stockholders' meeting, as it was by law entitled to do; but defendant denies, as alleged in said paragraph or otherwise, that it elected all of the directors, officers and managers of the said Copper Company from its own employees, directors and officers; denies that it controlled, directed, handled or transacted all or any of the business of said Copper Company as a department or bureau of the business of this defendant, or collected, received, handled or used all or any of the moneys or proceeds from the operation of the said mining properties, or all or any of the profits thereof. Denies that this defendant appropriated all or any of said moneys, proceeds or profits to its own use, either as alleged in said paragraph or otherwise.

6. Answering paragraph 6 of said complaint, this defendant denies that it caused the title of said mining properties to be taken in the name of said Copper Company; denies that it caused the same to be developed or operated in the name of said Copper Company, or for the use or benefit of this defendant, or at all. Denies that the title to said properties was taken in the name of said Copper Company, or that said properties were operated in the name of said Copper Company, as a convenience to this de-

fendant, or to facilitate the business of this defendant, either as alleged in said paragraph 6 or otherwise.

7. Answering paragraph 7 of said complaint this defendant is unable to ascertain therefrom at what period or time the board of directors of the Copper Company was composed of the seven persons mentioned in said paragraph, or the times when F. M. Murphy, E. B. Gage, H. M. Robinson, [25] Selwyn Eddy and B. L. Mason were directors of this defendant and for that reason is unable either to admit or deny said allegation. And for the same reason this defendant is unable to admit or deny the allegations of said paragraph concerning the individuals who constituted the executive committee of said defendant, and the executive committee of said Copper Company.

8. Answering the allegations of paragraph 8 of said complaint, this defendant denies that, either as alleged therein or otherwise, it created the said Copper Company or used the same as an auxiliary, subsidiary, branch, agent or instrumentality in conducting or carrying on the business of this defendant, or at all.

9. Answering the allegations of paragraph 9 of said complaint, this defendant denies that in the year 1903, or at any other time, it caused said Copper Company to execute a first or any mortgage or deed of trust upon all or any of its mining properties, as alleged in said paragraph, or at all. And denies that the mortgage or deed of trust mentioned in said paragraph was executed for the use or bene-

fit of this defendant, or that this defendant used all or any of said bonds or of the proceeds of sale thereof, in its business, or that it used all or any of the capital stock of said Copper Company, or the proceeds of the sale thereof, in the business of this defendant, either as alleged in said paragraph or at all.

10. Answering the allegations of paragraph 10 of said complaint, this defendant denies that in furtherance of its business or for any of the purposes mentioned in said paragraph, or at all, this defendant created two certain or any dummy corporations under the laws of Arizona. Denies that Arizona Southern Railroad Company or Southern Arizona [26] Smelting Company were or have been dummy corporations, either as alleged in said paragraph or otherwise; denies that this defendant created the said Arizona Southern Railroad Company or the Southern Arizona Smelting Company; denies that this defendant elected all or any of the directors, officers or managers of either of said corporations, or at any time controlled or managed the affairs of both or either of said corporations, as bureaus or departments of its business, either as alleged in said paragraph or otherwise; denies that this defendant caused all or any of the shares of the capital stock of said two corporations, or either of them, to be issued to or held in the name of the Copper Company; denies that in 1904, or at any other time, this defendant caused all or any of the shares of the capital stock of said Railroad Company, or of said Smelting Company to become sub-



ject to the lien of said mortgage or deed of trust, either as alleged in said complaint, or otherwise.

11. Answering the allegations of paragraph 11 of said complaint, this defendant denies that any of the mining or other properties described in said paragraph were purchased, developed or operated by this defendant, through the Imperial Copper Company, or said Arizona Southern Railroad Company or said Southern Arizona Smelting Company. And denies that any of said mining or other properties were subjected by this defendant to the lien of said mortgage or deed of trust, either as alleged in said paragraph or otherwise.

12. Answering the allegations of paragraph 12 of said complaint, this defendant denies that on the 3d day of July, 1911, it owned, held and controlled a majority or any of said bonds, and all or any of the shares of stock of said Copper Company; denies that on said date, or at any time, either as alleged in said paragraph or otherwise, this defendant caused a suit to be [27] instituted for the foreclosure of said mortgage or deed of trust; denies that, either as alleged in said paragraph, or otherwise, this defendant obtained a decree of foreclosure of said mortgage or deed of trust, or an order of sale of the mining properties and shares of stock mentioned in said paragraph; denies that, either as alleged in said paragraph or otherwise, this defendant caused all or any of said mining properties and shares of stock to be sold under said foreclosure, or caused the same, or any part thereof, to be bid in at such sale, in the name of Leo Goldschmidt,



either as alleged in said complaint or at all; and denies that said Leo Goldschmidt purchased said property for the use or benefit of this defendant, or for the use or benefit of said F. M. Murphy, the President and chief officer of this defendant, or as representing the stockholders and bondholders, or any of them, of this defendant; denies that this defendant or the said F. M. Murphy, as the real parties in interest in said purchase at said foreclosure sale, are now negotiating for the sale of all or any of said mining properties and shares of stock or as parties interested in said purchase have made and entered into some character of agreement with the American Smelting & Refining Company, a corporation, as alleged in said complaint, for the sale of all or any of said mining properties and shares of stock. And this defendant has no knowledge as to whether the said Smelting & Refining Company is now in possession of said mining properties, or is working the same.

13. Answering the allegations of paragraph 13 of said complaint, this defendant denies that any of the claims mentioned in said paragraph as having been filed in the bankruptcy proceedings against said Copper Company, excepting only, the claims of this defendant for the sum of \$39,423.02, were controlled by this defendant, or by the said F. M. Murphy [28] as President or chief officer of this defendant. This defendant has no knowledge as to what is shown by the various proofs of debt filed in said bankruptcy proceedings, as alleged in said paragraph, and therefore neither admits nor denies

the allegations in relation thereto.

14. Answering the allegations of paragraph 14 of said complaint, this defendant admits said allegations.

15. Answering the allegations of paragraph 15 of said complaint, this defendant denies that at any time there was some or any character of agreement between this defendant the said Murphy as the President and chief officer thereof, and the creditors of said estate, that said bankruptcy proceedings should lie dormant, or that this defendant and said Murphy should be allowed time within which to refinance or rehabilitate said mining properties, or to enable this defendant or the said Murphy to raise sufficient funds with which to liquidate, pay off or discharge the debts mentioned in said paragraph, either as alleged therein or otherwise. Denies that in pursuance of such or any agreement, or relying upon any representations or promises alleged to have been made by this defendant or the said Murphy, the said creditors or any of them allowed said bankruptcy proceedings to lie dormant until some time in 1914, or until the election or qualification of plaintiff herein as such Trustee; denies that any seeming delay in the institution of this action was caused either in whole or part by this defendant, or by the said F. M. Murphy, either as alleged in said paragraph or otherwise. Denies that this defendant or the said F. M. Murphy controlled the said bankruptcy proceedings during all or any of the time mentioned in said paragraph.

16. Answering the allegations of paragraph 16

of said bill of complaint, this defendant denies that the sale [29] of said mining properties and shares of stock under said foreclosure proceedings was caused by any action of this defendant, either as alleged in said paragraph or otherwise; denies that said sale resulted in stripping said Copper Company of all or any of its assets, to which plaintiff herein as trustee in bankruptcy might or could have been entitled, either as alleged in said paragraph or otherwise.

17. Answering the allegations of paragraph 17 of said complaint, this defendant denies that there has not been sufficient moneys or property come into the hands of plaintiff as Trustee of said estate with which to pay dividends upon the claims filed and allowed by the Referee in said bankruptcy proceedings.

18. Answering the allegations of paragraph 18 of said complaint, this defendant says that it has no knowledge as to whether or not plaintiff is advised and informed that this defendant became or is liable for, all or any of the debts of said Copper Company as filed and allowed in said bankruptcy proceedings, and as alleged in said paragraph or at all; this defendant denies that it became or is liable for all or any of the debts of said Copper Company, whether the same be filed or allowed in said bankruptcy proceedings or not. And defendant denies that all or any of the mining property or the said shares of stock of the said Railroad Company or of the said Smelting Company, or any thereof, were purchased at the foreclosure sale by this defendant, or were purchased for its use or benefit, and



denies that the same, or any part thereof, are liable for all or any of said debts as alleged in said paragraph or at all.

WHEREFORE, defendant having fully answered, prays that plaintiff take nothing by his action and for its costs in this behalf expended.

SELIM M. FRANKLIN,  
ELLINWOOD & ROSS,  
Attorneys for Development Company of America,  
a Corporation. [30]

[Endorsed]: E-27 (Tucson). In the U. S. District Court, District of Arizona. John H. Martin, etc., Plaintiff, vs. Development Company of America, a Corporation, Defendant. Motions and Answer. Filed September 28, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Service admitted this 28th day of Sept., 1915. Francis M. Hartman, Attorney for Plff. [31]

---

*In the United States District Court for the District  
of Arizona.*

IN EQUITY—No. E-27 (Tucson).

JOHN H. MARTIN, Trustee of Imperial Copper  
Company, a Corporation, Bankrupt,  
Plaintiff,

vs.

THE DEVELOPMENT COMPANY OF AMER-  
ICA, a Corporation,  
Defendant.

**Judgment.**

The motion of defendant in this cause, The Devel-



Development Company of America, a corporation, to dismiss the complaint of plaintiff, on the ground that the same does not state facts sufficient to constitute any cause of action against it, nor any cause of action whatsoever against said defendant, having heretofore been heard and submitted to the court, Selim M. Franklin, Esq., appearing as counsel for said defendant, and Francis M. Hartman, Esq., and E. F. Jones, Esq., as counsel for plaintiff, and the Court being fully advised in the premises, does hereby ORDER that said motion be sustained, and that judgment dismissing said cause be entered herein. To all of which rulings and orders, and to each of them, plaintiff excepted.

WM. H. SAWTELLE,  
Judge.

Dated this 6th day of June, 1916.

[Endorsements]: In Equity—No. E-27. In the United States District Court for the District of Arizona. John H. Martin, Trustee, etc., Plaintiff, vs. The Development Company of America, a Corporation, Defendant. Judgment. Filed June 6th, 1916. Mose Drachman, Clerk. [32]

*In the United States District Court for the District  
of Arizona.*

IN EQUITY—No. E-27.

JOHN H. MARTIN, Trustee in Bankruptcy, of the  
Imperial Copper Company, a Corporation,  
Bankrupt,

Plaintiff,

vs.

THE DEVELOPMENT COMPANY OF AMER-  
ICA, a Corporation,

Defendant.

**Petition for Appeal.**

Now comes the above-named John H. Martin, Trustee in Bankruptcy, of the Imperial Copper Company, a corporation, bankrupt, plaintiff herein, by Francis M. Hartman, Esq., and Edwin F. Jones, Esq., his attorneys, in open court, on this 6th day of June, A. D. 1916, at the time of the rendition and signing of the order, judgment and decree in the above-entitled cause, and, conceiving himself to be aggrieved by the order, judgment and decree rendered herein, does hereby appeal from the said order, judgment and decree, and the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, and he prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Tucson, June 6th, A. D. 1916.

FRANCIS M. HARTMAN,

EDWIN F. JONES,

Solicitors for John H. Martin, etc., Plaintiff.

And now, to wit, on June 14, 1916, it is ordered that the appeal be allowed as prayed for.

WM. H. SAWTELLE,

Judge. [33].

[Endorsements]: No. E-27 (Tucson.) In the United States District Court for the District of Arizona. John H. Martin, Trustee, etc., Plaintiff, vs. The Development Company of America, a Corporation, Defendant. Petition for Appeal. Copy rec'd June 14, 1916. Selim M. Franklin, Atty. for Defendant. Filed June 14th, A. D. 1916. Mose Drachman, Clerk. [34]

---

*In the United States District Court for the District of Arizona.*

**Minute Entry Made on June 14th, 1916.**

IN EQUITY—No. E-27.

JOHN H. MARTIN, Trustee in Bankruptcy, of the  
Imperial Copper Company, a Corporation,  
Bankrupt,

Plaintiff,

VS.

THE DEVELOPMENT COMPANY OF AMERICA,  
a Corporation,

Defendant.

**Order Allowing Appeal, etc.**

Upon the rendering of the order, judgment and decree herein in the above-entitled cause on this date, sustaining the defendant's motion to dismiss plaintiff's complaint on the ground that the same does not state facts sufficient to constitute a cause of action, John H. Martin, Trustee in Bankruptcy of The Imperial Copper Company, a corporation, bankrupt, by Francis M. Hartman, Esq., and Edwin F. Jones, Esq., his solicitors, and attorneys, gave notice in open court of his appeal to the United States Circuit Court for the Ninth Circuit, from the said order, judgment and decree of this court, and at the same time did file herein his assignment of errors.

This Court did then order, as no bond was required from said trustee in bankruptcy, that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the said order, judgment and decree so rendered herein, be and the same is hereby allowed to the said John M. Hartman, Trustee in Bankruptcy of said The Imperial Copper Company, a corporation, bankrupt, plaintiff, and that a certified transcript be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as provided by law and the rules of said court.

And, it having been stipulated and agreed in open court [35] between the parties, by their respective attorneys, that this order be made and entered as of June 6, A. D. 1916, the date of rendition of said order, judgment and decree, it is therefore



ordered that this minute order be so entered as of said date. [36]

---

*In the United States District Court for the District  
of Arizona.*

IN EQUITY—No. E-27.

JOHN H. MARTIN, Trustee in Bankruptcy of  
THE IMPERIAL COPPER COMPANY, a  
Corporation, Bankrupt,

Plaintiff,

vs.

THE DEVELOPMENT COMPANY OF  
AMERICA, a Corporation,

Defendant,

**Plaintiff's Assignment of Errors.**

And now, on the 14th day of June, A. D. 1916, came the above-named plaintiff, by his solicitors, Francis M. Hartman and Edwin F. Jones and says that the order judgment and decree entered in the above-entitled cause on the 6th day of June, A. D., 1916, is erroneous and unjust to defendant:

FIRST. Because defendant filed its answer to the merits of plaintiff's bill at the same time that it filed its motion to dismiss said bill for want of equity.

SECOND. Because the Court erred in holding that defendant had not waived its motion to dismiss plaintiff's bill for want of equity by filing at the same time its answer to the merits of said bill.

THIRD. Because the Court erred in holding that plaintiff's said bill of complaint does not state facts

sufficient to constitute a cause of action against defendant.

FOURTH. Because the Court erred in sustaining defendant's motion to dismiss said complaint for want of equity and in dismissing said action.

WHEREFORE, plaintiff prays that the said order, judgment and decree be reversed, and that the said United States District Court for the District of Arizona be instructed to enter an [37] order overruling and denying defendant's said motion to dismiss, and for further proceedings thereon as prayed for in said bill of complaint.

FRANCIS M. HARTMAN,  
EDWIN F. JONES,

Solicitors for Appellant, John H. Martin, Trustee in  
Bankruptcy of the Imperial Copper Company,  
a Corporation, Bankrupt.

[Endorsements]: In the U. S. District Court for the District of Arizona. No. E-27 (Tucson). John H. Martin, Trustee of Imperial Copper Company, a Corporation, Bankrupt, Plaintiff, vs. The Development Company of America, a Corporation, Defendant. Plaintiff's Assignment of Errors. Copy received June 14, 1916. Selim M. Franklin, Attorney for Defendant. Filed June 14, 1916. Mose Drachman, Clerk. [38]

*In the United States District Court for the District  
of Arizona.*

IN EQUITY—No. E-27.

JOHN H. MARTIN, Trustee in Bankruptcy of  
THE IMPERIAL COPPER COMPANY, a  
Corporation, Bankrupt,  
Plaintiff,

vs.

THE DEVELOPMENT COMPANY OF  
AMERICA, a Corporation,  
Defendant,

**Praecipe for Transcript of Record.**

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record of this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the appeal heretofore perfected, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. The Complaint.
2. Defendant's Motion to Dismiss for Want of Jurisdiction.
3. Defendant's Motion to Dismiss for Want of Insufficiency of Fact to Constitute a Valid Cause of Action in Equity.
4. Defendant's Plea in Bar.
5. Defendant's Answer to the Merits (Omitting all Exhibits which are Attached to said Answer).

6. The Judgment and Decree.
7. Petition for Appeal and Allowance of Appeal.
8. Assignment of Errors.
9. The Clerk's Certificate.
10. This Praecipe.

The said transcript to be filed with the Clerk of the Circuit Court of Appeals of the Ninth Circuit at San Francisco, California, before July 5th, 1916.

FRANCIS M. HARTMAN,  
EDWIN F. JONES,

Solicitors for Appellant. [39]

Service of copy accepted this 14th day of June, 1916.

SELIM M. FRANKLIN,  
Attorney for Defendant.

[Endorsements]: No. E-27—Tucson. In the U. S. District Court of the District of Arizona. John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a Corporation, Bankrupt, Plaintiff, vs. The Development Company of America, a Corporation, Defendant. Plaintiff's Praecipe for Transcript. Filed June 14, A. D. 1916. Mose Drachman, Clerk. [40-41]

---

**Certificate of Clerk United States District Court  
to Transcript of Record.**

United States of America,  
District of Arizona,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby



certify that the foregoing pages, numbered one to forty, inclusive, constitute and are a true, complete and correct copy of the transcript of record prepared by counsel in the case of John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a Corporation, Bankrupt, Appellant, vs. The Development Company of America, a Corporation, Appellee. In Equity—No. E-27 (Tucson), as the same remain on file and of record in said District Court, and as the same is called for in the praecipe filed herein.

I further certify that the cost of preparing and certifying to said record amounts to the sum of \$24.50, and that the same has been paid in full by the appellant, John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a corporation.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States District Court for the District of Arizona at Tucson, in said District, this 23d day of June, in the year of our Lord One Thousand Nine Hundred and Sixteen, and of the Independence of the United States of America, the one hundred and fortieth.

[Seal] MOSE DRACHMAN,  
Clerk United States District Court, District of  
Arizona.

By Effie D. Botts,  
Deputy Clerk. [42]

---

[Endorsed]: No. 2822. United States Circuit Court of Appeals for the Ninth Circuit. John H. Martin, as Trustee in Bankruptcy of the Imperial Copper Company, a Corporation, Bankrupt, Appel-

lant, vs. The Development Company of America, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Received June 26, 1916.

F. D. MONCKTON,  
Clerk.

Filed June 29, 1916.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.